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RIGHTS OF CRIMINALS.

SAMUEL GEORGE SMITH.¹

IT IS only in recent years that the criminal has been an object of particular study. The laws deal with crime, and the penal codes confine themselves to defining what acts are crimes and what penalties shall be provided. During the last forty years there has been a consistent effort, largely in America, to shift the emphasis from the crime to the criminal. Workers in this field have insisted upon making the chief end of punishment the reformation of the man. The practical movement goes steadily forward, and I think with increasing wisdom and vigor.

A counter current has set in refusing to recognize crime as abhorrent because the criminal is held to be a fixed type, and his deed, therefore, to be practically automatic. There is no sentimentality about this view, although it sounds as if there were, and I shall show later that it is as lacking in pity as it seems to be lacking in any substantial basis of fact. Prison men agree that there are confirmed criminals, but they do not agree that repeated crimes prove any man to be under any compulsion to break the laws. The doctrine of the criminal type taught by Lombroso, and urged on by arm-chair theorists, in the name of what they call Eugenics, has no substantial following among practical workers. It is agreed that as a class criminals are neither so healthy, so intelligent, nor so moral as normal men. But there are more people out of prison than in of whom the same thing can be said. Let anyone visit the slums and make careful observation.

¹ The author, who had served as president of the American Prison Association and as president of the National Conference of Charities and Corrections and had been a frequent contributor to the literature of social ethics, died March 25, 1915.

Alphonse Bertillon invented the French system for the identification of criminals. A few measurements of different parts of the human body, a front and side view of the criminal, and a card index is the apparatus. He shows us that each human body differs from every other, and that physically the individual is unique. With his card index and his instruments of measurement it does not take more than ten minutes to identify a man. The English system of identification by thumb prints is based upon the difference in the fine lines upon the human hand. It is said that this method is really very ancient, and has been used among some of the inferior races who cannot sign their names but instead use the thumb print.

If men differ physically, still more is the uniqueness of personality exhibited in the action of the mind and the passions. Every tree in the forest becomes something different to every pair of human eyes, every fact has uncounted angles. Otherwise, we should have but one school of philosophy and no poets at all. We live in a multitudinous world, and upon the uniqueness of the individual, Professor Royce has based an interesting argument for immortality.

When a man has been called a criminal not much progress has been made. These men, having numbers and wearing the same kind of clothes, engaged in common labor under common rules of confinement, are men and, therefore, they are personalities. It is of little use to study the class called the criminal, except for the larger outlines and a working basis. Each man must be studied for himself. This is essential to any intelligible theory of penology.

This view is fundamental to the detail of prison management, to the working of the indeterminate sentence and the parole law, and to seeking reformation as the object of a penal system. At the same time, even within the prison, there must be a certain amount of organization that is on the whole crude and unscientific. The men are usually put into three grades according to their conduct,

with varying privileges. The number of grades might possibly be increased, but that would increase the labor of prison officials, and perhaps would work no good result, for as we have seen according to theory there should be as many grades as there are individuals. That is impracticable. The same thing arises in the whole structure of normal society. It is very difficult to find unique treatment for the unique man. Even in the variety of occupations and the division of labor, which seems in the first view so complex, the individual must sometimes suffer in order that organized society may exist.

An account of the thing we call society, is a description of human relations. Every right has a corresponding duty, and any declaration of rights is an explanation more or less correct of the way in which men ought to act toward each other. The value of the individual is found in his capacity for successful combinations with his fellowmen. The strength of any social group depends upon the number of its ties. The solitary man has no significance, even if he has any real existence. Like Bertillon, we know our friends by certain measurements, but they are not stated in physical terms. A man lives in a house, belongs to a family, has a business, prefers certain amusements, has acquired certain habits, and so we recognize him. In your thought, pluck him loose from all these relationships and he has no more reality than a Greek ghost.

Robinson Crusoe had a new island when he found the man Friday. He began to organize industries and in some sense to lay the foundations of a state. It would have complicated matters very much if a third man had arrived. Robinson Crusoe might have been no longer king. To live together in large numbers men need to have more wisdom and a higher sense of justice than is generally supposed.

The rights of normal human beings are not permanent, but change as time goes on, while new duties arise. The baby has a right to be taken care of, the youth to help to care for himself that in manhood he may fill the obligation

of helping in the care of someone else. One of the chief difficulties with men who have become rich is that while their fortune has changed there has been no corresponding change in their sense of obligation. They do not remember the bright dreams of youth, and what they then thought a man ought to do who had a million dollars.

The criminal has a special set of rights of his own because he has refused normal human relations. In ordinary society, rights and duties have some definiteness in statement and the obligations are sufficiently important to keep the world going. In the family, children and parents exhibit the primary relation of the world. The children have a right to the care of their fathers and mothers, but the parents have a right to the obedience and service of the children. In the state, the right of the ruler depends at last upon his capacity to serve the citizen, and if the citizen finds protection, he must pay for it by support of the government in peace and in war. In industry, in like manner, the worker and the superintendent have reciprocal relations. It goes further than the saying that "A day's work demands a day's wages." The superintendent must make the business so successful that the wages can be as large as possible, and the workman must see that without economic success there will soon be neither work nor wages, and he must regard the business as his own, which in fact it is.

The criminal has rejected the obligations of ordinary society. He has broken its rules, he has interfered at some point with the rights of his fellowmen. By so doing he has lost his primary relation to the state. He may not be wholly to blame. Society must often share with him the burden of his fault, and in fact, though he has become an anti-social man, society feels for him a special responsibility. The state, therefore, creates for him a special institution, called a reformatory or a prison, and introduces him to a new life. This new life is not simply confinement. That is only an incident represented in the walls. The state assumes new duties and creates new relations for the man

in prison. The prisoner would not obey the laws of normal society, therefore he is introduced to an entirely new set of rules, and happy is he if he discovers at once that these rules are to be administered impartially, without passion, but that they must be obeyed. The penal institution furnishes its inmates a new set of rights and duties.

The primary right of a criminal is to be convicted of his offense. The failure of justice may be the complete undoing of a human life. When a man who is a criminal is set free by a court of law, it is doubtless a menace to society, but the main point is that it is the worst disaster that can happen to the man. He has rejected the social judgments declared by the state in its very highest vocation. He has shown himself unfitted for the free social life. If prisons are what they should be, the man who has deliberately broken the law can only find that quality of mercy that is not strained by legal condemnation and sentence. If the man really needs a treatment which the ordinary citizen does not, society is under obligations to give it to him, and in his sentence, society, too calm for wrath, has done her best.

The criminal has a right to be held responsible for his unlawful deed. Within recent years a new body of doctrine practically denies him this right. At this point I plead for the man. Before the last meeting of the American Medical Association, an address, as reported in the newspapers, declared that the time would come when no man would be held responsible for his conduct until he was proven to be sane. It is quite obvious that such a doctrine is a reversal of the history of human experience. Greek poets no less than Roman lawyers, and the founders of states equally with the founders of religion, have consistently held that the wrongdoer must be confronted with his deed. To-day the most usual excuse is, "I was drunk when I did it." To that excuse the reply is obvious, "You had no right to be drunk." Once relieve the guilty of responsibility and no guilt is left, but the flood-gates have been opened for an increasing carnival of crime, pouring

out upon the world a new deluge of filth too appalling to be contemplated. The doctrine of human responsibility is the granite foundation of human society.

But I am pleading for the right of the criminal to be held responsible for his own sake. If he must have committed his unlawful deed, the idea of reforming him is an absurdity. Doubtless there are a few men who are morally insane. They are not nearly so numerous as is generally supposed. For the man who is morally insane there is little chance, and what is required in his case is permanent confinement. I am pleading for a nobler view of man, and for the criminal man. I am urging that he might have been better in his past, and that, therefore, he may become better in his future. He need not have committed his crime, and, therefore, notwithstanding his failure, he may find regeneration. We are in danger of losing the tender note of faith in human nature in the pursuit of a new psychology as false as it is stupid. Man, even criminal man, is an angel, though in dark disguise. It is the business of society to wash her hands clean and then to seek to rid the prisoner of his evils, performing the great miracle of revealing the angel-man. Yes, society must wash her hands and assume her share of the burden. We are not wise enough with our children in home or in school. We are not wise enough to make a sound social order. We are not wise enough to remove the pitfalls which human devils dig for their fellow-men. Society is responsible and the individual is responsible, but let us not give up the hope that society may be improved, and that the man may reach higher levels.

It is possible that a crime may be so accidental as to be what the French call a crime of "occasion," and it is possible that the shock of conviction is all that is required. In such a case the man should be put upon probation, under the guardianship of the state, for a sufficient time to find out his real character. Assuming that as a rule confinement properly follows conviction, it is only fair to consider what are the rights of the prisoner. There is the obvious physical side. He has a right to cleanliness, sanitation, proper

food, plenty of light and fresh air, as well as medical supervision. Prisoners, as a rule, are young men, and there is something lacking about the prison if, as a rule, they do not leave the place in far better health than they entered it.

The prisoner has a right to discipline. The prison official sometimes thinks that discipline exists for the sake of the prison. But, of course, the rules are not to make it easier for the keepers but exist solely for the improvement of the prisoner. The prisoner has not only broken the law, he has usually broken himself. Often he has worked when he must, and slept when there was nothing else to do. He has not only committed an unlawful act, but he has been himself essentially a lawless person. He must form a new set of habits. He must find the value of a regular life, and that is the reason for dividing the twenty-four hours into definite periods and working by the clock in every detail, for in this way the routine becomes not only regular but rational, and discipline and toil illuminate the mind and strengthen and enthrone the will.

The egoistic primary passions, abnormal and unregulated, the hungers of the body, in one way or another accompany most crime. Here is the central problem of the prison, for within its walls the criminal has the right to such curbing of his passions as will lead to self-control. The use of drugs and drink are symptoms of a nervous and psychological break-down. They do not so much cause crime as they indicate the decadence of the individual. The instinct of sex, primal and noble in all healthy human beings, becomes wayward, lawless and often bestial. It is the business of the prison régime to balance and control rather than to destroy the natural instincts. The physician has work to do. There are questions of diet, a wholesome monotony and an opportunity to think. These are not enough. The prisoner must be furnished with such an objective view of life as will involve recognition of the rights of society, and a desire to help other people. By all the means employed he must become an altruist.

The vast majority of prisoners are deficient in education, the education of the mind and the education of the hand. Many of them are young men who have had little or no home training, and most of them have not passed the grammar grades. The young men find the prison school of priceless value, and mature men often become intellectually awake. Multitudes of these people have no skill in any honest task. They should have been trained to gainful occupation in their childhood. That social duty has not been fulfilled. Even late, it must be done behind the prison walls. The prison has not been successful unless the man who leaves it is in a better condition to earn his living than he was when he entered.

As an incident to education within the prison comes the prison library. If Mr. Carnegie were anxious to do another fine thing in his life, he would seek expert advice and furnish the money to reorganize the prison libraries of the country. As a rule they have no real standards. There should be some man in the prison whose duty it is to know what the prisoners read, and who is able to guide them in the choice of books. Reading is a necessity to most men in prison. It is a necessity because books break down the walls at least enough to let the mind escape to other scenes and other lands. He has little companionship and little choice of friends. In books he comes face to face with the best there is in the author. I would not exclude all fiction, but I would shut out a great deal of it. Erotic, emotional and adventurous reading are not indicated. The poor fellow in prison has a right to a guide, and the man who would study him and is able to understand him, is of more worth than any other psychologist that was ever introduced into prison walls.

The right of the prisoner, more fundamental perhaps than any other, is concerned with a prophecy of his future. He has a right to be regarded as a potential member of society. No warden is fitted for his place who does not believe in possible successes. I am not pleading for softness or sentimentality; quite the opposite. I am pleading for an

invigorating faith in man, backed by the strength of will and judgment of those who have the leadership of our penal institutions. There is no missionary or philanthropist who has a task of greater value. The warden is working upon essentially a religious problem. He is dealing with the regeneration of men. He must stem the tide of the false pessimism, so noisy and so cheap, which would have us believe that prisons are nothing else than the natural and permanent homes of human failures.

There are many ways to look at a prison. It is a workshop, it is a safeguard to society, but the essential point of view is that the prison is a moral hospital. The man has been sick and he has been sent here for treatment. This is not simply a nice figure of speech, it is the plainest prose. The prison management has a very complicated case, for their men are usually sick in body, in mind, and in character. Here again is the place for emphasis upon individual treatment. Every man must be studied for himself. If the staff of a hospital for sick bodies should simply classify the patients by their diseases and give all the patients in a class precisely the same medicine and the same food, the result would be little less than murder. The history, age, constitution, and all the other physical facts are taken into account and the skillful physician treats the man. Skillful diagnosis and individual treatment in prisons are a necessary form of justice.

But here arises another point, one of the most delicate in the whole problem. No one ever gets well in a hospital. He may improve, and the after-care of discharged patients is a matter of much concern. I used to wonder why it was that superintendents of insane hospitals did not like to say how many patients had been cured, they prefer to say they had "recovered." It is now pretty generally understood that the insane should be gradually introduced by simple steps to normal duties and functions.

The prison can only partially accomplish a reform. It will always remain an abnormal place for abnormal men. The discharged prisoner is in a state of moral convalescence.

He is not entirely well and cannot be until he has re-established habits of freedom under suitable relationships, and deserves to be treated from that point of view. It was because he failed in the common life of society that he was sent to prison. If the prison has succeeded with him he is better fitted for normal relations than he was before he committed the crime, but he must be introduced to them gradually and under the guardianship of the state.

Skilled work and a place to work with suitable oversight are useful, but the man has a right to proper companionship and human sympathy. He needs not only the guardianship of the state, but he has a right to the help of those who believe in human righteousness because they believe in human souls.

The released man may limp a little. He may need a crutch. The Pharisee will kick away the crutch and it is hard to tell where the more serious danger lies, whether in the allurements of bad associations, or in the cold and repellent attitude of supposedly good men. The general attitude of society is one of severity toward public offenses which are often not nearly so bad as many wrongs easily condoned because they are private.

The discharged prisoner is also a man, and he very often has the high purpose of making a clean future. When society is better and more gentle and more largely filled with the spirit of the great lovers of mankind, the task of the released man will be more easy, and his success will be more certain. He has surely a right to the best chance possible. He has a right to a place by the common hearthstone, and he needs brotherhood as well as work.

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